Puah Bee Hong & Anor v Pentadbir Tanah Daerah Wilayah Persekutuan Kuala Lumpur & Anor (Teo Keng Tuan Robert, Intervener) and another appeal

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NOS 01-31-92 AND 02-362-93
GUNN CHIT TUAN CJ (MALAYA), MOHAMED AZMI AND PEH SWEE CHIN SCJJ
3 JUNE 1994

Land Law *— Sale of land — Order for sale — Order of stay — Land administrator allowed sale despite order of stay — Whether High Court had jurisdiction to issue order of stay on Land Administrator — Whether order for sale equivalent to injunction — Whether public auction null and void —Government Proceedings Act 1956 s 29(1)(a) — Specific Relief Act 1950 s 54(d)*

Land Law *— Sale of land — Order for sale — Order of stay — Land administrator allowed sale despite order of stay — Whether public auction null and void — Purchaser already in occupation — Whether purchaser to quit and deliver up vacant possession*

The appellants ('the chargors') charged their land together with the house built thereon ('the charged property') to the second respondent ('the bank'), who obtained an order for sale in an enquiry under s 263 of the National Land Code 1965 before the first respondent ('the Land Administrator'). The chargors, on the grounds that they had not been duly served with the notice of hearing of the enquiry in which the reserve price was fixed and the order for sale obtained; and that the reserve price was too low, filed an originating summons seeking, inter alia, for the order for sale to be stayed. The judge granted such an order.

On the day of the public auction, the Land Administrator was informed of the order of stay but nonetheless, allowed the public auction to proceed. The intervener was the successful bidder at the public auction. The trial judge found that the notice of hearing of the enquiry was served on the chargors and that the reserve price represented the fair market price. The judge also held that the excuses of the Land Administrator in proceeding with the auction were unacceptable. However, the judge ordered that the order of stay be set aside as the order of stay was equivalent to an injunction by virtue of s 29(1)(a) of the Government Proceedings Act 1956 and s 54(d) of the Specific Relief Act 1950, and therefore, the High Court had no jurisdiction to issue an order of stay of sale to a Land Administrator. The chargors have appealed ('the first appeal').

In the second appeal, the chargors appealed against the order of the High Court in granting vacant possession of the charged property to the intervener.

Held, dismissing the first appeal but allowing the second appeal:

(1) An order of stay is not equivalent to an injunction and therefore not amenable to the relevant sections of the Government Proceedings Act 1956 and the Specific Relief Act 1950. Therefore, the trial judge's process of interpreting the order of stay and the relevant statutory provisions were unacceptable. The High Court therefore has jurisdiction to issue an order of stay on a Land Administrator on any grounds that are sufficient.

(2) However, in view of the trial judge's conclusions as to the reserve price and the due service of the notice of hearing of the enquiry on the chargors of the enquiry in which the order for sale was made, the order of stay was properly set aside. Therefore, the first appeal was dismissed.

(3) An order of a superior court such as the High Court, until it is set aside, must be obeyed by everyone whether its validity is challenged or not. A superior court is also considered to be a court of unlimited jurisdiction in contentious civil matters and is therefore to be distinguished from inferior tribunals established outside the hierarchy of ordinary courts. An order of an inferior tribunal (the Land Administrator in this case), can be challenged collaterally as regards its validity in any proceedings in which such validity becomes relevant, without the need to file proceedings first for the very purpose of having it set aside. Thus the Land Administrator had disobeyed the order of stay which was still then in force, when he proceeded with the auction and he had therefore acted illegally. The public auction was in consequence null and void. The bank was ordered to refund the purchase price of the charged property to the intervener and to hold a fresh auction.

(4) Even though the order of stay was subsequently set aside after the public auction, this would not validate the pre-existing invalidation of the public auction which was illegally held.

(5) In view of the invalidity of the public auction, the second appeal was allowed and the intervener was ordered to quit and deliver up vacant possession of the charged property.

Per curiam:

Service of the copy of the order of stay on the Land Administrator was not essential, the essence being that the Land Administrator should have knowledge of it.

[Bahasa Malaysia summary

Perayu ('penggadai') telah menggadai tanah mereka bersama dengan rumah yang telah didirikan di atasnya ('harta yang telah digadai itu') kepada responden kedua ('bank itu'), yang telah memperolehi suatu perintah jualan dalam suatu penyiasatan di bawah s 263 Kanun Tanah Negara 1965 di hadapan responden pertama ('Pentadbir Tanah itu'). Penggadai telah memfailkan suatu saman pemula dan memohon supaya perintah jualan itu digantung atas alasan bahawa mereka tidak

A disampaikan dengan notis pendengaran penyiasatan itu di mana suatu harga rezab telah ditetapkan dan perintah jualan telah diperolehi; dan bahawa harga rezab adalah terlalu rendah. Hakim itu telah memberi perintah sedemikian.

Pada hari jualan lelong awam itu, Pentadbir Tanah itu telah diberitahu mengenai perintah penggantungan itu akan tetapi, telah B membenarkan perlansungan jualan lelong awam itu. Pencelah merupakan pembuat tawaran yang berjaya di dalam jualan lelong awam itu. Hakim perbicaraan telah memutuskan bahawa notis pendengaran penyiasatan itu telah disampaikan kepada penggadai dan bahawa harga rezab itu merupakan harga pasaran yang adil. C Hakim itu juga memutuskan bahawa sebab-sebab Pentadbir Tanah itu supaya meneruskan dengan jualan lelong itu tidak boleh diterima. Akan tetapi, hakim itu telah memerintahkan supaya perintah penggantungan itu diketepikan kerana perintah gantungan itu adalah sama dengan suatu injunksi disebabkan oleh s 29(1)(a) Akta Prosiding Kerajaan 1956 dan s 54(d) Akta Relief Spesifik 1950, dan oleh yang D demikian, Mahkamah Tinggi tidak mempunyai bidang kuasa untuk mengeluarkan suatu perintah kepada seorang Pentadbir Tanah untuk menggantung jualan itu. Penggadai telah membuat rayuan ('rayuan pertama').

Di dalam rayuan kedua, penggadai telah membuat rayuan terhadap E perintah Mahkamah Tinggi memberi milikan kosong harta yang telah digadai itu kepada pencelah.

Diputuskan, menolak rayuan pertama tetapi membenarkan rayuan kedua:

F (1) Suatu perintah penggantungan tidak sama dengan suatu injunksi dan oleh itu tidak ditakluk oleh seksyen relevan Akta Prosiding Kerajaan 1956 dan Akta Relief Spesifik 1950. Oleh itu, proses hakim perbicaraan dalam mentafsirkan perintah penggantungan dan peruntukan statutori yang relevan itu tidak boleh diterima. Oleh yang demikian, Mahkamah Tinggi mempunyai bidang kuasa untuk mengeluarkan suatu perintah penggantungan ke atas seorang G Pentadbir Tanah berdasarkan sebarang alasan yang mencukupi.

(2) Akan tetapi, memandangkan keputusan hakim perbicaraan mengenai harga rezab dan penyampaian notis untuk pendengaran yang telah dibuat atas penggadai dan di mana perintah jualan itu telah dibuat, perintah penggantungan itu telah diketepikan secara H betul. Oleh itu, rayuan pertama telah ditolak.

(3) Suatu perintah mahkamah yang tinggi seperti Mahkamah Tinggi, mesti dipatuhi oleh setiap orang sama ada keesahannya dicabar atau tidak, sehingga ianya diketepikan. Sebuah mahkamah yang tinggi juga dianggap sebagai mahkamah yang mempunyai bidang I kuasa yang tidak terhad di dalam perkara sivil bertikaian dan oleh itu mesti dibezakan daripada tribunal rendah yang ditubuhkan di luar hierarki mahkamah biasa. Suatu perintah tribunal rendah (Pentadbir Tanah di dalam kes ini), boleh dicabar secara kolateral berhubungan dengan keesahannya di dalam sebarang prosiding

di mana keesahan sedemikian menjadi relevan, tanpa keperluan untuk memfail prosiding terlebih dahulu untuk tujuan mengetepikannya. Oleh itu, Pentadbir Tanah itu tidak mematuhi perintah penggantungan itu yang masih lagi berkuatkuasa, apabila beliau meneruskan dengan jualan lelong itu dan oleh itu beliau telah bertindak menyalahi undang-undang. Dengan yang demikian, jualan lelong awam itu adalah batal dan tidak sah. Bank itu telah diperintah supaya mengembalikan wang belian harta yang telah digadai itu kepada pencelah dan untuk mengadakan jualan lelong yang baru.

(4) Walaupun perintah penggangtungan itu telah kemudiannya diketepikan selepas lelong awam itu, ini tidak boleh mengesahkan ketidaksahan jualan lelong awam yang wujud terlebih dahulu yang telah diadakan secara menyalahi undang-undang.

(5) Memandangkan ketaksahan lelong awam itu, rayuan kedua dibenarkan dan pencelah diperintahkan supaya keluar daripada dan memberi milikan kosong harta yang telah digadai itu.

Per curiam:
Penyampaian sesalinan perintah penggantungan itu ke atas Pentadbir Tanah itu tidak wajib, kerana yang penting hanyalah bahawa Pentadbir Tanah itu tahu mengenainya.]

Notes
For cases on orders for sale, see 8 *Mallal's Digest* (4th Ed) paras 1915–1925; [1989] Mallal's Digest 1119–1123; [1990] Mallal's Digest 867–879; and [1991] Mallal's Digest 1364–1374.

Cases referred to
1 *Ho Kok Thin & Ors v The Sheriff/Registrar of the High Court of Borneo & Anor* [1989] 3 MLJ 181 (refd)
2 *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 (refd)
3 *Hadkinson v Hadkinson* [1952] 2 All ER 567 (refd)
4 *Pembinaan KSY Sdn Bhd v Lian Seng Properties Sdn Bhd* [1991] 1 MLJ 100 (refd)
5 *Isaacs v Robertson* [1985] AC 97; [1984] 3 All ER 140; [1984] 3 WLR 705 (refd)
6 *Eu Finance Bhd v Lim Yoke Foo* [1982] 2 MLJ 37 (refd)
7 *Dunlop v Woollahra Municipal Council* [1982] AC 158; [1981] 1 All ER 1202; [1981] 2 WLR 693 (refd)
8 *Re Khoo Kim Hock* [1974] 2 MLJ 29 (refd)

Legislation referred to
Government Proceedings Act 1956 s 29(1)(a)
Specific Relief Act 1950 s 54(d)

Appeal from: Civil Suit No S7–21–349–89 and Originating Summons No S1–24–104–1993 (High Court, Kuala Lumpur)

A *R Abraham* (*MK Eng* with him) (*MK Eng & Associates*) for the intervener in Civil Appeal No 01–31–92.

KS Dass (*D Kalaimany* with him) (*Kalai & Partners*) for the appellant in Civil Appeal Nos 01–31–92 and 02–362–93.

Abu Bakar Jais (Senior Federal Counsel) for the first respondent in Civil Appeal No 01–31–92.

B *Leela Jesuthasan* (*Chew Kar Meng & Partners*) for the second respondent in Civil Appeal No 01–31–92.

CH Liew (*MK Eng* with her) (*MK Eng & Associates*) for the respondent in Civil Appeal No 02–362–93.

C *Cur Adv Vult*

Peh Swee Chin SCJ (delivering the judgment of the court): Both the appeals have been heard together, as they involve more or less the same parties and the same subject matter. In Civil Appeal No 01–31–92 however, all the parties are together in the same appeal and it would be far more D appropriate to deal with this appeal in this judgment so that decision of liability of this appeal will help us very conveniently to dispose of the other appeal at the same time. The issues are really few after scrutiny of documents and submissions though they involve so many other subsidiary, but not determinative of the appeals, sub-issues that put us in danger at times of E being unable to see the wood for the trees.

We will now deal with Civil Appeal No 01–31–92. Some of the few questions that arise are:

(a) as to whether an order of stay of proceedings directed at the Land Administrator, the first respondent herein, amounts to an injunction so F as to be amenable to s 29(1)(a) of the Government Proceedings Act 1956 and also s 54(d) of the Specific Relief Act 1950 and is therefore barred by the said sections; and

(b) as to whether an order of the High Court can be disobeyed with impunity and if not, apart from the consideration of contempt proceedings, as to what then is the effect of such disobedience.

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The appellants (hereafter 'the chargors') had charged their land together with the house built thereon to the second respondent (hereafter 'the bank') who obtained an order for sale in an enquiry under s 263 of the National Land Code 1965 before the first respondent (hereafter 'the Land Administrator'). The intervener was the successful bidder at a public auction H held in pursuance of the said order for sale and it was this public auction that has been very much impugned at the hearing of this appeal (the land with the house thereon is hereafter 'the charged property').

The chargors (on the grounds that they had not been duly served with the notice of hearing of the enquiry in which the reserve price was fixed and I the order for sale obtained; and further that the reserve price at RM500,000 was in any event too low and ought to have been RM615,000), filed Originating Summons No S7–21–349–89 which is set out below with its sub-heading only:

Between

1 Puah Bee Hong @ Bee Hong (f)
2 Khoo Tian Applicants

And

1 Pentadbir Tanah Daerah
Wilayah Persekutuan, Kuala Lumpur
2 Pacific Bank Bhd Respondents

Originating summons
(ex parte)

Let all parties concerned attend before the judge on 16 August 1989 at 2.30pm on the hearing of an application of the applicants for the following reliefs:

(a) That the order for sale made by the first respondent on 13 June 1989 in respect of a property owned by the applicants and known as BM 1434, Lot No 43948 and MG 7 Lot No 8351 be stayed pending further direction of the honourable court.
(b) That in the alternative, the first respondent be restrained from proceeding to sell by public auction on 17 August 1989 of two properties held by the applicants and known as GM 1434, Lot No 43948 and MG 7 Lot No 8351 until further order of this honourable court.
(c) That in the alternative the second respondent be restrained from proceeding with a public auction on 17 August 1989 of two properties owned by the applicants and known as GM 1434, Lot No 43948 and MG 7 Lot No 8351 until further order of this honourable court.
(d) An order that the first respondent do determine the reserve price of two properties known as GM 1434, Lot No 43948 and MG 7 Lot No 8351 pursuant to s 263(2)D National Land Code Act No 56 of 1965 within four months after holding an enquiry between the applicants and the second respondent as the honourable court may deem fit.
(e) Further or other consequential directions.
(f) The costs of this application be costs in the cause.

Dated 14 August 1989.

—Sgd—
Senior assistant registrar

—Sgd—
Solicitors for the applicants

The originating summons was herein served on both the cited parties, viz the Land Administrator and the bank, and on 16 August 1989, the order was granted by the learned judge. The order is similarly set out below:

Upon the application of the applicants in this action and upon reading the originating summons dated 14 August 1989 and the affidavit of Puah Bee Hong @ Bee Hong (f) and Khoo Thian affirmed on 14 August 1989 and filed herein and upon hearing Mr D Kalaimany of counsel for the applicants and Ms Indrani of counsel for the second respondent and in the absence of the first respondent it is hereby ordered that the order for sale made by the first respondent on 13 June 1989 in respect of properties owned by the applicants and known as GM 1434 Lot No 43948 and MG 7 Lot No 8351 be stayed and it is further ordered that the first respondent do determine the reserve price of two properties

known as GM 1434 Lot No 43948 and MG 7 Lot No 8351 pursuant to s 263(2)D National Land Code within four (4) months from the date of the order to hold an enquiry between the applicants and the second respondent it is also ordered that the applicants shall pay all costs and expenses in calling off the auction to be held on 17 August 1989 and it is lastly ordered that the expenses for holding an enquiry and auction be paid out of the proceeds of the sale.

It will be noticed that this order was incidentally in fact a final order leaving nothing more to be adjudicated; it having also been made after necessary service of parties required to be served. The order by which the said order for sale was stayed, was in the nature of a stay of execution of the said order for sale coupled with the holding of another enquiry before the Land Administrator again, within four months thereafter, to determine the reserve price afresh and therefore make an order for sale again. From the originating summons herein, it will be obvious that what was granted was not either a restraining order directed to the Land Administrator or a similar restraining order against the bank, respectively, in terms of prayers (b) and (c) of the said originating summons but an order in terms of prayer (a) therein, made in the presence of the bank's solicitor but in the absence of the Land Administrator who was absent though he had been served. This order (for convenience it is hereafter called 'the order of stay'), was apparently obtained by the chargors at the eleventh hour as litigants are often wont to.

In the meantime, the public auction sought to be stopped to make way for the new enquiry for a new order for sale was scheduled for the following day, ie 17 August 1989.

The Land Administrator was informed by telephone of the order of stay by the solicitor for the bank (at whose instance, the said order for sale was in the first place obtained), before 9am on that day for the scheduled auction. According to her, the Land Administrator agreed with the said solicitor to delay the auction until 10.45am by which time, a letter by the said solicitor confirming the order of stay was by agreement, to be delivered to the Land Administrator. The said letter was duly delivered at about 10.25am but alas, the Land Administrator did not keep his promise and ignored the order of stay despite his knowledge of the same. The bank and not the Land Administrator, could have been the only one really to suffer from the order of stay, it will be observed. The Land Administrator allowed the public auction of the charged property to proceed by 10am and it was completed by 10.15am by the fall of the hammer on the bid by the intervener (hereafter 'the successful bidder'). We agree with the conclusion of the learned judge as to what happened as stated.

We also agree with the conclusion of the learned judge that the original notice of hearing of the original enquiry (in which the original order for sale was obtained), had been duly served on the chargors whose allegation of non-service of the same was groundless. The non-service was one of the two grounds for the chargors' application for the order of stay.

We also agree with the learned judge that the reserve price of RM500,000 fixed at the original enquiry represented a fair market price and that the price of RM615,000 suggested by the chargors was not acceptable by comparison, the latter price having been based not on the usual method of comparison with similar sales, as adopted by the chargee's valuers. The

Land Administrator had fixed the reserve price at RM500,000 correctly. The inadequacy of the chargee's valuer's price was the other ground for the application for the order of stay.

We also agree with the learned judge that the excuses of the Land Administrator were unacceptable for proceeding with the auction in the manner aforesaid. The excuses were that he could not rely on the phone call from the solicitor for the bank because of his previous experience of 'prank calls' and further that he should be served with a copy of the order of stay. In our view, service of such a copy of the order of stay was not essential, the essence being that Land Administrator should have knowledge of it. What he did was highly questionable.

The successful bidder, among other things, filed his summons-in-chambers for intervening in this originating summons herein as a party and further for the application, viz the originating summons herein praying for the order of stay, etc to be dismissed. In the middle of the hearing of the successful bidder's application, the learned judge directed the Land Administrator to file his summons-in-chambers for the order of stay to be set aside.

Both the applications of the successful bidder and the Land Administrator were apparently heard together on 12 August 1992, and both applications which were similar though differently worded, were allowed with costs with the consequence that the order of stay was set aside and the application by originating summons herein by the chargors was dismissed. Against this order dated on 12 August 1992, the appeal is now before us.

The reason of the learned judge for making this impugned order dated 12 August 1992 was to the effect that the order of stay was equivalent to an injunction following the decision of High Court of Borneo in *Ho Kok Thin & Ors v The Sheriff/Registrar of the High Court of Borneo & Anor*,[1] by virtue of s 29(1)(a) of the Government Proceedings Act 1956 and s 54(d) of the Specific Relief Act 1950, such statutory provisions having been the mainstay of the decision at Borneo. Sections 29 and 54(d) aforesaid are set out below for ease of reference:

> 29(1) In any civil proceedings by or against the Government the court shall, subject to this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require:
>
> Provided that —
>
> (a) where in any proceedings against the Government any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; ...
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> 54 An injunction cannot be granted —
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> ...
>
> (d) to interfere with the public duties of any department of any Government in Malaysia, or with the sovereign acts of a foreign Government.
>
> ...

In *Ho*,[1] the court there cited *Government of Malaysia v Lim Kit Siang*[2] for support.

In *Ho*[1] and also *Lim Kit Siang*,[2] an injunction in each case, was expressly applied for. In *Ho*,[1] the plaintiff asked the High Court for the injunction, by name, to stop the Sheriff/Registrar of the High Court from holding a fresh sale (auction) by summons-in-chambers; and in *Lim Kit Siang*,[2] the plaintiff also asked expressly for an injunction to restrain one United Engineers (M) Bhd from signing some contracts with the government.

In the instant appeal, an injunction was applied for expressly but not granted, but an order of stay was only given in terms of one of the prayers. How could the order of stay be treated as an injunction? It was an order of High Court in terms as prayed of prayer (a) of the originating summons herein. True, if the alternative prayers for the relevant restraining orders of the originating summons were granted, then the learned judge's reasoning could have substance.

Again an order for staying proceedings or for staying the execution of an order of a lower court or an inferior tribunal (viz one of those public authorities or bodies exercising judicial or quasi-judicial functions or otherwise deemed to be acting judicially and amenable to the High Court's supervision either by way of appeal or judicial review), is not an injunction, not only in name, but also for some distinctive dissimilarities which are well indicated in a passage from Nelson's *Law of Injunctions* (3rd Ed) as follows:

> An order of stay in an execution matter is in the nature of a prohibitory order and is addressed to the court that is carrying out execution. It is not of the same nature as an order allowing an appeal and quashing execution proceedings. That kind of order takes effect immediately it is passed, for such an order takes away the very jurisdiction of the court executing the decree as there is nothing left to execute thereafter. But a mere order of stay of execution does not take away the jurisdiction of the court. All that it does is to prohibit the court from proceeding with the execution further, and the court unless it knows of the order cannot be expected to carry it out. Therefore, till the order comes to the knowledge of the court its jurisdiction to carry on execution is not affected by a stay order which must in the very nature of things be treated to be a prohibitory order directing the executing court which continues to have jurisdiction to stay its hand till further orders. It is clear that as soon as a stay order is withdrawn, the executing court is entitled to carry on execution and there is no question of fresh conferment of jurisdiction by the fact that the stay order has been withdrawn. The jurisdiction of the court is there all along. ... In effect, therefore, a stay order is more or less in the same position as an order of injunction with one difference. An order of injunction is generally issued to a party and it is forbidden from doing certain acts. It is well settled that in such a case the party must have knowledge of the injunction order before it could be penalized for disobeying it. Further it is equally well settled that the injunction order not being addressed to the court, if the court proceeds in contravention of the injunction order, the proceedings are not a nullity. In the case of a stay order, as it is addressed to the court, and prohibits it from proceeding further, as soon as the court has knowledge of the order it is bound to obey it and if it does not, it acts illegally, and all proceedings taken after the knowledge of the order would be a nullity. That is the only difference between an order of injunction to a party and an order of stay to a court.

This passage was cited by the learned judge with approval but its salient points were not followed unfortunately. We approve this passage as representing the correct position.

We would like to mention another well-known dissimilarity. It is that, apart from the Rules of the High Court 1980, the High Court has always that inherent jurisdiction to order a stay of proceedings to prevent any abuse of process. Further where a superior court of record such as the High Court and the courts above it, has the jurisdiction or discretion to decide any cause or matter by way of appeal, judicial review or otherwise, such superior court will have the inherently incidental power in any event to suspend the operation or execution of any order concerned in such cause or matter pending the decision of such court, but such power will be exercised according to the usual principles applicable thereto, or otherwise judicially, according to fair play and common sense. To deny such power would render such appeal or judicial review, etc, illusory or an exercise in futility.

In the circumstances, we are unable to agree with the learned judge's view to the effect that an order like the order of stay in the instant appeal is equivalent to an injunction and therefore amenable to the relevant sections of the Government Proceedings Act 1956 and the Specific Relief Act 1950. We find his Lordship's process of interpreting the order of stay and the relevant statutory provisions unacceptable.

We therefore hold that the High Court has jurisdiction to issue an order of stay of sale of charged land to a Land Administrator on any grounds that are sufficient.

It now remains for us to decide whether the order of stay was therefore correctly set aside on merits by the learned judge for this appeal, in actual terms, is against the setting aside of the order of stay. In view of his Lordship's conclusions as to the reserve price and the due service of the notice of hearing of the enquiry on the chargors of the enquiry in which the reserve price of RM500,000 was fixed and the order for sale was made, we are of the view that the order of stay was properly set aside on 12 August 1992. We would dismiss the appeal (Civil Appeal No 01–31–92).

However, this is not the end of this appeal. Right from the outset of the hearing, we have been troubled by the disobedience of the order of stay on the part of the Land Administrator. After anxious consideration, we do not think that the setting aside of the order of stay so operates as to obliterate such disobedience and to render it harmless. The consideration is anxious because the successful bidder has paid the price of RM500,000 in full, and if we are not mistaken, he has moved also into and occupied the charged property which consists of a bungalow with a swimming pool.

We are of the considered view that an order of a superior court such as the High Court, even if it is eg, an order obtained ex parte or a default judgment; until it is set aside, must be obeyed by everyone whether its validity is challenged or not, and 'it is the plain and unqualified obligation of every person against, or in respect of whom an order is made by a court of competent jurisdiction to obey it unless and until the order is discharged', per Romer LJ in *Hadkinson v Hadkinson.*[3] This passage was quoted with approval and adopted by this court in *Pembinaan KSY Sdn Bhd v Lian Seng Properties Sdn Bhd.*[4] It was stated in *Isaacs v Robertson*[5] that it was misleading

to describe such an order of competent jurisdiction as void or voidable, for every order must be obeyed until it was set aside and 'these are not orders which are void ipso facto without the need for proceedings to set them aside'. One of the reasons is that such a superior court must be presumed to have the jurisdiction to make an order which it has made. Every order made by a superior court must be regarded as an order of competent jurisdiction.

Further, a superior court, like the High Court, is considered to be a court of unlimited jurisdiction in contentious civil matters and is therefore to be distinguished from those inferior tribunals which are established outside the hierarchy of ordinary courts. Such public authorities and bodies are conferred with limited jurisdiction by various statutes. This condition of such limited jurisdiction has always been one of the primary bases for the judicial review by a superior court of their decisions on the ground of lack or excess of jurisdiction. A Land Administrator, like the Land Administrator in the instant appeal, the Special Commissioners of Income Tax and various other similar bodies are such inferior tribunals. For the expression of 'unlimited jurisdiction', please see *Isaacs*[5] at p 103 when Lord Diplock, in passing, also referred to such a superior court as 'a court of unlimited jurisdiction in the course of contentious litigation'.

As distinct from an order of a superior court, on the other hand, an order of an inferior tribunal can be challenged collaterally as regards its validity in any proceedings in which such validity becomes relevant, without the need to file proceedings first for the very purpose of having it set aside. Generally (but not in all cases), such an order could be disobeyed with impunity without the need for proceedings to set it aside, as was done, eg in *Eu Finance Bhd v Lim Yoke Foo*,[6] when a Land Administrator there, of his own motion, made a second order for sale of some charged land under similar provisions of the National Land Code 1965 which was held to be a nullity or no order at all. Abdoolcader J, in delivering the judgment of the Federal Court observed at p 39: '... such an order can be successfully attacked in collateral proceedings: it can be disregarded and impeached in any proceedings before any court, or tribunal and whenever it is relied upon ...'

Similarly, the Privy Council in *Dunlop v Woollahra Municipal Council*,[7] in connection with some building restrictions which were imposed by some Australian local authority and which were ultra vires, observed that the person affected 'can ignore the purported exercise of such power. It is incapable of affecting his legal rights'.

In *Pembinaan KSY*,[4] a High Court order, (in that case, a default judgment) was involved. The judgment creditor in respect of this default judgment appeared in court to support a bankruptcy petition filed by some creditor against a debtor who also happened to be the judgment debtor in respect of the said default judgment. It was argued and the learned judge agreed and held that the judgment creditor in respect of the said default judgment had no locus standi to appear in support of the petitioning creditor as the learned judge after consideration, held that the default judgment was a nullity and the debtor was entitled to ignore it (ie to attack it collaterally). The learned judge's decision was set aside on appeal before this court.

Thus the Land Administrator on 17 August 1989 had disobeyed the order of stay which was still then in force; he had therefore acted illegally. The said public auction was in consequence null and void, please see the relevant part of the passage from Nelson's *Law of Injunctions*, supra. A

In holding that the public auction was void, we have reached a rather unique position. It will be remembered that it was the disobedience by the Land Administrator of the order of stay that the said public auction was rendered void; what then would be the effect of the setting aside of the same order of stay subsequent to the holding of the said public auction? It will be remembered that we have upheld such setting aside of the order of stay as stated above. B

We are of the view that even though the order of stay was subsequently set aside after the said public auction, it would not validate the pre-existing invalidation of the said public auction which was illegally held, as explained above. C

Another question may then surface arising out of the above, ie if the said public auction was void, it having been held in breach of the order of stay, would not the Land Administrator's application to set aside the order of stay be similarly void? The answer in our view is that there lies a difference between the holding of the said public auction and the filing of the application. It is that the holding of the said public auction was in disobedience of the terms of the order of stay which had to be obeyed before it was set aside in proceedings instituted for the purpose, while the filing of the application to set aside the order of stay itself could not be said to be in disobedience of the order of stay, but was therefore harmless. D E

For demonstrating the harmlessness of such an application to set aside the order of stay, we can draw an analogy between the application to set aside the order of stay and an application by an undischarged bankrupt, without the sanction of the official assignee to rescind a receiving order and an adjudication order in bankruptcy proceedings, see *Re Khoo Kim Hock*,[8] though sanction was required of the official assignee for commencing any action in court. It is the basic requirement of justice that plainly enables both applications to be filed. F

We are aware that to hold the said public auction as being void while the successful bidder has paid the full purchase price and moved into the charged property will give rise to a great deal of inconvenience. G

Convenience is very often incompatible with law and inconvenient consequential orders would have to be made later following our conclusion that the public auction held on the 17 August 1989 of the charged property was null and void. H

We now deal with the second civil appeal, viz Civil Appeal No 02–362–93, in which the chargors have appealed against another order of the High Court made on 25 June 1993 granting vacant possession of the charged property to the intervener, the successful bidder, by way of summary procedure under O 89 of the Rules of the High Court 1980 and further refusing a stay of execution of such summary order for possession of the charged property. In view of what has just been decided in regard to the invalidity of the public auction held on 17 August 1989 in respect of the charged property, it follows that this appeal by the chargors should be I

allowed even though the order of stay is held by this court to have been properly set aside by the learned judge in the court below. The circumstances thus militate against making an order for costs in favour of the chargors, though they have succeeded in this appeal though such costs would have otherwise in normal circumstances followed the event. We therefore make the following formal orders and consequential directions.

In Civil Appeal No 01–31–92, we therefore dismiss the appeal of the appellants with costs here and below to second respondent (the bank) and the intervener (the successful bidder) but not to the first respondent who should be deprived of costs for having acted improperly in disobeying the order of stay. We further make the following further consequential directions in this civil appeal as follows:

(a) The order of the High Court dated 12 August 1992 is upheld, consequently, the order of the High Court dated 16 August 1989 is set aside, the originating summons herein dismissed.

(b) The public auction held on 17 August 1989 in respect of the charged property in question is hereby declared to be null and void subject to the following further directions.

(c) The first respondent or the second respondent as the case may be is to refund RM500,000 received or retained by the first respondent or the second respondent as the case may be, to the intervener without interest within four months from today.

(d) The first respondent is to hold a fresh or another public auction for the sale of the charged property in question within four months from today with the reserve price at RM500,000, in the usual manner and on the other usual terms and conditions.

(e) There shall be liberty to apply but only for the purpose of implementing the consequential directions set out above, should difficulties ensue in respect of such implementation.

In Civil Appeal No 02–362–93, we allow the appeal of the appellants and set aside the order of the High Court dated 25 June 1993 and we further make the following consequential directions:

(a) The intervener is to quit and deliver up vacant possession of the charged property in question within four months from today without being liable to make any payment by way of rent or otherwise, to the respondents for his occupation of the charged property in question since his entry on the charged property.

(b) There shall be liberty to apply but only for the purpose of implementation of such consequential directions.

(c) Each party is to bear its own costs.

Order accordingly.

Reported by Prof Ahmad Ibrahim